

RALPH C. MEMMOTT

IBLA 84-362

Decided September 27, 1985

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring 29 unpatented placer mining claims abandoned and void. U MC 110209 through 110210; U MC 141108 through 141112; U MC 141114; U MC 173788 through 173798; U MC 240582 through 240591.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment -- Mining Claims: Assessment Work

Under the provisions of 43 U.S.C. § 1744 (1982), an owner of an unpatented mining claim must file evidence of annual assessment work or notice of intention to hold prior to Dec. 31 of each year. Such filings must be made within each calendar year, i.e., on or after Jan. 1 and on or before Dec. 30. Failure to file within the prescribed period properly results in the claim being deemed abandoned and void and, therefore, extinguished.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment -- Mining Claims: Assessment Work

When enacting sec. 314(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), Congress intended to extinguish those claims for which timely filings were not made. Failure to file on time, in and of itself, causes the claims to be lost.

3. Evidence: Presumptions -- Evidence: Sufficiency -- Rules of Practice: Evidence

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary.

However, an allegation that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

APPEARANCES: Ralph C. Memmott, Fillmore, Utah, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Ralph C. Memmott has appealed from a January 20, 1984, decision of the Utah State Office, Bureau of Land Management (BLM), which declared 29 unpatented lode mining claims abandoned and void because appellant had failed to file evidence of annual assessment work or notice of intention to hold the claims. The claims subject to this appeal are as follows:

<u>Claim Names</u>	<u>Location U MC Numbers</u>	<u>Year of Missing Date(s)</u>	<u>Annual Filing</u>
Gypsum Bench Nos. 6 and 7	110209 and 110210	3/30/62	1979
Climax Nos. 4 through 8	141108 through 141112	3/20/72	1980
Magic Rock No. 2	141114	2/10/60	all years
Red Hills Nos. 1 through 11	173788 through 173798	3/29/67	1982
Bushnell Spring Nos. 21 through 30	240582 through 240591	3/24/81	1982

The decision incorrectly identified the Red Hills Nos. 1 through 11 as U MC 173778 through U MC 173811.

Appellant has filed a statement of reasons in which he admits that the missing documents for the Magic Rock No. 2 (U MC 141114), the Red Hills Nos. 1 through 11 (U MC 173788 through U MC 173798), and the Bushnell Spring Nos. 21 through 30 (U MC 240582 through U MC 240591) had not been filed, but alleges that the necessary filings had been made for the Gypsum Bench Nos. 6 and 7 (U MC 110209 and U MC 110210), and the Climax Nos. 4 through 8 (U MC 141108 through U MC 141112).

On May 5, 1984, notice was given that this Board was suspending consideration of the appeal pending a decision by the United States Supreme Court in United States v. Locke. On April 1, 1985, the Supreme Court rendered an opinion (United States v. Locke, 105 S. Ct. 1785 (1985)), and this case once again became ripe for review.

The record discloses that the claims were located by appellant, copies of the location notices were filed with the Millard County Recorder's Office, and subsequently filed with BLM, at which time BLM assigned mining claim recordation numbers to the claims. There is no record that a notice of intention to hold the claims, affidavit of assessment work, or detailed report (as provided for in 30 U.S.C. § 28-1 (1982)) relating to the claims was filed by appellant in the year or years shown above.

[1] The law applicable to this case can be found at 43 U.S.C. § 1744 (1982), which states, in pertinent part:

§ 1744. Recordation of mining claims

(a) Filing requirements

The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. * * *

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, [or] a detailed report provided by section 28-1 of title 30, relating thereto.

(2) File, in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

(b) Additional filing requirements

The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to October 21, 1976 shall, within the three-year period following October 21, 1976, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. * * *

(c) Failure to file as constituting abandonment; defective or untimely filing

The failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; * * *.

[2] As previously noted, this matter was suspended pending the Supreme Court's determination in United States v. Locke, supra. In Locke the Supreme Court found that 43 U.S.C. § 1744 (1982) was constitutional and that it was the intent of Congress to extinguish those claims for which timely filings were not made. The Supreme Court further found that failure to file on

time, in and of itself, causes the claims to be lost. Locke, *supra* at 1796. Failure to file a notice of intent to hold, an affidavit of assessment work performed, or a detailed report related thereto, as required by 43 U.S.C. § 1744(a)(1) and (2) (1982) caused the claims to be conclusively deemed abandoned and void.

Appellant admits no filing was made for certain of the claims. Those claims need not be given further consideration. The claims are conclusively deemed to be abandoned and void.

[3] A legal presumption of regularity supports the official acts of public officers in the proper discharge of their duties. Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Phillips Petroleum Co., 38 IBLA 344 (1978). As was stated in H. S. Rademacher, 58 IBLA 152, 155, 88 I.D. 873, 875 (1981): "It is presumed that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing." When an appellant claims he submitted a document to BLM, but BLM has no record of receiving it, this presumption of regularity weighs against a finding that BLM received the document and subsequently lost it through mishandling. Glenn W. Gallagher, 66 IBLA 49, 51 (1982). The presumption is not overcome by an uncorroborated statement that the missing document was submitted to BLM.

With respect to the Gypsum Bench and Climax claims, appellant argues the required filings had been made, but had been lost by BLM. In support of this contention, appellant has submitted documents received by him noting BLM's receipt of other filings. However, these documents tend to support the decision, rather than overcome the presumption that the documents were not received. On one hand, appellant has submitted no evidence that the required documents had been filed for the claims at issue other than the statement that he had done so. On the other hand, the notice of receipt corresponds with the documents found in the record. 1/ Further, appellant, by his own admission, failed to send the Red Hills Nos. 1 through 11 documents "because the claimant had misplaced the assessment notice" (Statement of Reasons at 7). The evidence submitted by appellant in support of the documents having been filed is not sufficient to overcome the presumption of regularity. 2/

1/ Appellant notes two errors in one of the receipts, then explains the nature of these errors. As corrected, the receipts match the record of the documents filed. Had these errors, or appellant's explanation of the errors left any doubt regarding the "missing" filings, there may have been cause to agree with appellant. However, by comparing the receipt to the file, there is no doubt as to the nature of the error. One digit was dropped in one number and there was one too many in another.

2/ The receipt for documents filed which appellant submits in support of his allegation of filing proof of labor in 1979 for the Gypsum Bench Nos. 6 and 7 claims (Exh. G to Appellant's Brief) is a copy of the accounting statement for recordation of the notice of location for these and other claims which appear in the case file. There is no evidence that the proof of labor was received.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

R. W. Mullen
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

